

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
DR. THOMAS M. EDSALL, and  
GRISEL EDSALL,  
Plaintiffs

v.

\_\_\_\_\_  
ASSUMPTION COLLEGE, DR.  
THOMAS R. PLOUGH, DR. JOSEPH  
F. GOWER, and DR. JOHN F. MCCLYMER,  
Defendants

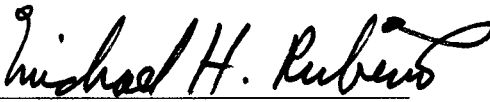
CIVIL ACTION NO. 04-40106-FDS

**AFFIDAVIT OF MICHAEL H. RUBINO, ESQ.**

I, Michael H. Rubino, being duly sworn hereby depose and state:

1. I am over eighteen years of age and competent to testify. I submit this affidavit on personal knowledge and in support of Defendants' Motion to Dismiss.
2. I am an attorney licensed to practice law in the Commonwealth of Massachusetts and General Counsel for Defendant Assumption College.
3. Attached hereto as Exhibit A is a true and accurate copy of "Appendix II – Grievance Procedure," appended to the 1998-1999 Edition of the Assumption College Faculty Handbook and Faculty Policy Document.
4. Attached hereto as Exhibit B is a true and accurate copy of the Academic Freedom section (Section N) of the 1998-1999 Edition of the Assumption College Faculty Handbook and Faculty Policy Document.
5. The 1998-1999 Edition of the Assumption College Faculty Handbook and Faculty Policy Document and its Grievance Procedure (Ex. A) and Section N (Ex. B)

have been in force and effect continuously since their adoption by Assumption College in 1998.

  
Michael H. Rubino

On this date, August 27, 2004, before me the undersigned Notary Public personally appeared Michael H. Rubino, proved to me through satisfactory evidence of identification, which as personal knowledge to be the person whose name is signed on the proceeding document and who swore to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

  
Notary Public

My Commission Expires: March 6, 2009

## **Exhibit A**

## APPENDIX II -- GRIEVANCE PROCEDURE

1. A faculty member of any rank or status who believes that he/she has a grievance as defined in Paragraph 2 below should first attempt to resolve the problem with the appropriate department chair or director and other College officials. If the problem cannot be informally resolved, the faculty member may resort to the following procedure.
2. Definition of a Grievance A faculty member who believes that he/she has not been accorded due process as specified in this document or who believes that considerations which violate his/her academic freedom (as defined in Section N) have contributed to the situation may file a grievance in any of the following situations:
  - a. when he/she has received notice that he/she has not been granted tenure;
  - b. when he/she has not had a renewal of his/her contract;
  - c. when he/she has been issued a terminal contract;
  - d. when he/she has not been promoted;
  - e. when he/she believes that he/she has received unfair or inequitable treatment in any other matter, whether or not covered by this document.
3. A grievance must specify the basis thereof, the relief or remedy sought, and include any supporting documentation.
4. Composition of the Faculty Appeals Committee The Faculty Appeals Committee is a standing committee of the College. It consists of five tenured faculty members from five different departments serving staggered three-year terms. The five members are elected by the faculty as a whole at the same meeting held to elect the members of the Evaluation Committee. Faculty members' terms begin on September 1. The committee will elect a chair annually. The Representative Faculty Senate will provide for alternatives or for some other means of filling vacancies resulting from illness, resignation, or other reason.
5. Duties and Procedures of the Faculty Appeals Committee The Faculty Appeals Committee receives and reviews grievances and provides the appropriate forum for their resolution in accordance with this Section.
  - a. Written grievances must be received by a member of the Faculty Appeals Committee within sixty days after notice of the occurrence of the event(s) upon which the grievance is based or within sixty days after the grievant knew or through the exercise of reasonable diligence should have known of the occurrence of event(s) upon which the grievance is based, whichever occurs first. The Faculty Appeals Committee may waive this time limit.
  - b. Upon the timely filing of a grievance, the Faculty Appeals Committee will meet within a reasonable period of time to consider the grievance.

- c. Upon receipt of a grievance, the Faculty Appeals Committee will forthwith provide a copy of it to the Provost/Dean of Faculty.

6. Procedure for Handling Grievances

Step I -- Informal Resolution by Faculty Appeals Committee

- a. Upon receipt of a grievance, the Faculty Appeals Committee will attempt to secure a settlement of the grievance by conducting informal discussions with and/or between the concerned individuals, at all times preserving the confidentiality of its proceedings.
- b. When a grievance is tentatively resolved by these informal methods, the proposed resolution shall be put in writing by the Faculty Appeals Committee and given to the grievant and the President of the College for approval. Such resolutions shall not constitute a precedent or be admissible in formal grievance proceedings under this document or in any other proceeding.

Step II -- Formal Consideration by Faculty Appeals Committee or Ad Hoc Grievance Committee

- a. If the grievance cannot be resolved by informal methods, the Faculty Appeals Committee will determine if a formal grievance hearing should be conducted to further ascertain the facts.
- b. The Faculty Appeals Committee shall give written notice to the President of the College and to all of the individuals concerned that a formal grievance hearing is to take place.
- c. The Faculty Appeals Committee shall have the option of conducting the formal hearing itself or appointing an Ad Hoc Grievance Committee to conduct the hearing. The Ad Hoc Grievance Committee shall consist of at least three full-time faculty.
- d. Within twenty-one calendar days after the receipt of a grievance, the Ad Hoc Grievance Committee (or the Faculty Appeals Committee) will set a date, time, and place for the grievance hearing that is convenient to the individuals concerned. Such date shall be at least fourteen and no more than thirty days later. These deadlines may be extended if the Faculty Appeals Committee determines them to be inequitable in a particular case.
- e. Hearings will normally be conducted in private and the individuals involved will make no public statements during the course of the hearings or thereafter except that nothing in this section shall restrict the right of either party to pursue public legal proceedings against the other or to make statements in the course of those proceedings.
- f. All individuals involved in the grievance may present witnesses and other evidence and have an advisor chosen from the College community.

- g. At the discretion of the Ad Hoc Grievance Committee (or Faculty Appeals Committee), the testimony may include that of qualified faculty members from this or other institutions of higher education. At the request of either party or the committee, a representative of a responsible educational association shall be permitted to attend the proceedings as an observer.
- h. During the proceedings both parties will be permitted to have legal counsel of their own choice. Separate legal counsel at the College's expense will be provided to the committee with respect to the conduct of the hearing. The committee's legal counsel shall not work at the same law firm as the Administration's counsel.
- i. It is the responsibility of the faculty under the terms of this document to cooperate with the grievance procedure and to participate in the proceeding when called upon to do so.
- j. The Ad Hoc Grievance Committee (or Faculty Appeals Committee) shall not be governed by formal rules of evidence and shall make such rulings and orders as the interests of justice and the College community may require.
- k. A verbatim record of the hearing or hearings will be taken at the College's expense and a typewritten copy will be made available to the parties without charge upon request. A copy of the record will be filed in the President's office at the conclusion of the hearing. There shall be no other verbatim record made except by determination of the Ad Hoc Grievance Committee (or Faculty Appeals Committee).
- l. If the faculty member alleges only that he/she has not been accorded due process as specified in this document, the Ad Hoc Grievance Committee (or Faculty Appeals Committee) will review such allegations. In such a case the Committee will not substitute its judgment on the merits for that of the person or persons who made the decision in question. Rather, if the Committee believes that the decision which is being grieved was the result of procedures in violation of this document, it will request reconsideration of the decision de novo by that person or persons.
- m. The Ad Hoc Grievance Committee (or Faculty Appeals Committee) will present its decision in writing within seven calendar days of the conclusion of the hearing to the individuals concerned with the grievance and to the President of the College. The decision will take the form of findings of fact, conclusions, and recommended disposition of the grievance and will respond to each of the faculty member's charges as they related to the procedures and practices outlined in this document. The findings of fact, conclusions, and the recommended disposition shall be based solely on the hearings record and this document. The recommended disposition of the grievance may be either accepted or rejected by the faculty member and the President.

### Step III -- Appeal Procedure

- a. Either party may appeal a decision of the Ad Hoc Grievance Committee or Faculty Appeals Committee within thirty calendar days after receiving written notification of the decision. The individual appealing shall present a statement of

appeal to the President unless the grievance directly involves the President (as dealt with in Section c.ii below).

- b. Contents of the Appeal The statement of appeal must set forth the grounds upon which the individual believes that procedures in this Section have not been properly followed.
- c. Review of Appeal
  - i. To the President Within one month after receiving an appeal, the President will review the matter and notify all of the individuals concerned of his/her final decision.
  - ii. Pertaining to the President Should the grievance involve a decision or action with which the President was directly involved, the grievant(s) or the President may file an appeal to the Executive Committee of the Board of Trustees. Only when the President is directly involved will such a review take place. In case of a dispute, the Executive Committee of the Board of Trustees shall be the sole judge of whether the President was directly involved. The time limits, contents of the appeal, and review of the appeal as set forth in this Appendix shall apply to appeals to the Executive Committee of the Board of Trustees, except that the Executive Committee of the Board of Trustees will hear the appeal at its regular meeting following at least twenty days after its receipt of the appeal and then notify all of the individuals concerned of their final decision within fourteen calendar days.

## 7. General Provisions

- a. The filing of any grievance under the provisions of this Section shall not prevent the College from taking the action complained of or any other action, subject however to the final decision on the grievance.
- b. Failure at any step of this procedure to communicate the decision on the grievance within the specified time limits shall permit the grievant to proceed to the next step.
- c. The Faculty Appeals Committee is responsible to ensure that the Ad Hoc Grievance Committee proceeds as expected and on schedule.
- d. The Faculty Appeals Committee or its Ad Hoc Grievance Committee may bring to the attention of the appropriate body any matter which needs more general consideration than the particular grievance allows.
- e. The official records of all, hearings and evidence of the Faculty Appeals Committee or its Ad Hoc Grievance Committee and any appeals shall be placed in custody of the President's Office.

**Exhibit B**



## **N. PRINCIPLES REGARDING ACADEMIC FREEDOM**

1. The 1940 Statement of Principles regarding Academic Freedom formulated by the American Association of University Professors and endorsed by the Association of American Colleges, of which Assumption College is a member, is the official policy of the College:
  - a. "The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his/her other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution."
  - b. "The teacher is entitled to freedom in the classroom in discussing his/her subject, but he/she should be careful not to introduce controversial matter which has no relation to the subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment."
  - c. "The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he/she speaks or writes as a citizen, he/she should be free from institutional censorship or discipline, but his/her special position in the community imposes special obligations. As a man or woman of learning and an educational officer, he/she should remember that the public may judge his/her profession and his/her institution by his/her utterances. Hence, he/she should at all times be accurate, should show appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he/she is not an institutional spokesperson."
2. Pursuant to the provisions of the Statement, the College reminds the faculty of a need to respect the aims of the College as a Catholic institution of higher learning in the classroom and in public utterances.